

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|--------------------|---|---------------------------|
| JUAN PEREZ-QUIROZ, |) | CASE NO. C06-1587-JLR |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | REPORT AND RECOMMENDATION |
| |) | |
| NEIL CLARK, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Juan Perez-Quiroz, proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by the U.S. Immigration and Customs Enforcement (“ICE”). (Dkt. #4). Petitioner requests that he be released from detention, arguing that he is being indefinitely detained contrary to the mandate in *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). Alternatively, petitioner argues that his detention is unreasonable because he is unable to afford the present \$50,000 bond amount, and requests that the Court lower his bond to \$2,500. (Dkt. #13 at 8). Respondent has moved to dismiss, arguing that petitioner’s continued detention is neither

01 indefinite nor unlawful. (Dkt. #10).

02 Having carefully reviewed the entire record, I recommend that petitioner's habeas petition
03 (Dkt. #4) be DENIED and respondent's motion to dismiss (Dkt. #10) be GRANTED.

04 II. BACKGROUND AND PROCEDURAL HISTORY

05 Petitioner is a native and citizen of Mexico who entered the United States without
06 inspection at or near San Ysidro, California in May 1986. (Dkt. #9 at L14). On August 18, 2004,
07 petitioner was encountered by a Border Patrol agent in Bellingham, Washington. (Dkt. #9 at
08 L88). Petitioner claimed that he had legal permanent resident status, but, after a records check,
09 petitioner admitted that he had been illegally residing in the United States for the last 18 years.
10 *Id.* A criminal history check revealed several convictions, including a conviction for Grand Theft
11 in violation of California Penal Code 487, and Embezzle Property by Public/Private in violation
12 of California Penal Code 504. (Dkt. #9 at L14).

13 On August 18, 2004, ICE issued a Notice to Appear, charging petitioner with deportability
14 under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), for being present
15 in the United States without being admitted or paroled, and under INA § 212(a)(2)(A)(i)(I), for
16 having been convicted of a crime involving moral turpitude. (Dkt. #9 at L14). At the same time,
17 ICE issued a Warrant for Arrest of Alien and a Notice of Custody Determination, setting bond in
18 the amount of \$50,000. (Dkt. #9 at L17-18). Petitioner requested a redetermination of the
19 custody decision by an Immigration Judge ("IJ"). (Dkt. #9 at L7).

20 On September 22, 2004, petitioner, proceeding through counsel, submitted a Motion to
21 Suppress and Exclude Evidence and Terminate Removal Proceedings. (Dkt. #9 at L25-36). On
22 September 27, 2004, the IJ denied petitioner's motion to suppress evidence and terminate

01 proceedings. (Dkt. #9 at L43-48).

02 On October 13, 2004, petitioner appeared for a bond redetermination hearing before the
03 IJ. (Dkt. #9 at L187-88). At the hearing, petitioner's counsel withdrew the request for a change
04 in custody status, stating that they had not been able to gather all the evidence. (Dkt. #9 at L188).
05 The IJ advised petitioner that he could renew the request when ready, and entered an order
06 indicating that "no action" would be taken because petitioner's attorney had withdrawn the
07 request. (Dkt. #9 at L50).

08 On December 13, 2004, petitioner appeared for removal proceedings before the IJ. (Dkt.
09 #9 at L94). The IJ repeated her finding and denied the motion to suppress evidence and terminate
10 proceedings. The IJ also found petitioner removable as charged in the Notice to Appear and
11 ordered him removed from the United States to Mexico. (Dkt. #9 at L52, L43-L48).

12 On December 20, 2004, petitioner appealed the IJ's decision to the Board of Immigration
13 Appeals ("BIA"). (Dkt. #9 at L53, L72-76). On April 18, 2005, the BIA adopted and affirmed
14 the IJ's decision, except for the finding that petitioner had not applied for any form of relief under
15 the INA, and remanded the matter to the IJ for consideration of petitioner's application for
16 voluntary departure. (Dkt. #9 at L301).

17 On April 28, 2005, petitioner appeared for another hearing before the IJ regarding the issue
18 of voluntary departure. (Dkt. #9 at L305). On May 20, 2005, the IJ issued an order granting
19 petitioner's application for voluntary departure until May 27, 2005. (Dkt. #9 at L306). Petitioner
20 appealed the IJ's May 20, 2005 order of removal to the BIA. (Dkt. 9 at L328-40).

21 On May 23, 2005, petitioner renewed his request for a bond redetermination hearing
22 before the IJ. Petitioner requested that the IJ release him on his own recognizance, or in the

01 alternative, reduce his bond from \$50,000 to \$1,500. (Dkt. #9 at L320-23). Petitioner submitted
02 a brief in support of his request, and letters from his sister, probation officer, friend, and two
03 former employers. (Dkt. #9 at L308-23). The IJ considered the evidence and determined that
04 petitioner's bond should remain at \$50,000. (Dkt. #9 at L324).

05 On June 22, 2005, petitioner appealed the IJ's bond decision to the BIA. (Dkt. #9 at
06 L373-79, L389-95). While his bond appeal was pending before the BIA, petitioner requested
07 another bond redetermination hearing by the IJ. (Dkt. #9 at L380). On July 15, 2005, the IJ
08 denied petitioner's request for a bond redetermination, finding that

09 Based upon [petitioner's] prior convictions, [petitioner's] ineligibility for any form of
10 relief from removal, and the poor prospect that [petitioner] might prevail on appeal
11 on the merits, the court finds that a bond of \$50,000.00 is reasonable under the
12 circumstances as there is a realistic risk of flight in this case.

12 (Dkt. #9 at L380, L388).

13 On August 25, 2005, the BIA affirmed without opinion the IJ's May 20, 2005, order of
14 removal and grant of voluntary departure. (Dkt. #9 at L396). Petitioner filed a Petition for
15 Review of the BIA's decision, and a motion for stay of removal and voluntary departure with the
16 Ninth Circuit Court of Appeals. (Dkt. #9 at L398-33, R136-152). The Ninth Circuit subsequently
17 entered a temporary stay of removal pursuant to the Court's General Order 6.4. (Dkt. #9 at L431-
18 32).

19 On September 23, 2005, the BIA dismissed petitioner's bond appeal as moot, noting that
20 neither the IJ nor the BIA had authority to set bond conditions because a final order of removal
21 had been entered in petitioner's case. (Dkt. #9 at L429).

22 On or about March 16, 2006, ICE conducted a post order custody review of petitioner's

case. (Dkt. #9 at R67-79). The ICE reviewing officer recommended that petitioner remain in custody, stating,

There are no travel document requirements for returning PEREZ to Mexico. PEREZ can be returned to Mexico in a timely manner once his case is decided by the Ninth Circuit Court of Appeals. PEREZ has a criminal record that includes two felony convictions and two misdemeanor convictions. PEREZ has no local community ties, property, employment, or dependents.

(Dkt. #9 at R68). On March 22, 2006, ICE Field Office Director A. Neil Clark issued a letter informing petitioner that he would continue to be detained pending the result of his appeal before the Ninth Circuit. (Dkt. #9 at R79).

On November 2, 2006, petitioner, proceeding pro se, filed the instant habeas petition. (Dkt. #4). On December 11, 2006, respondent filed a return memorandum and motion to dismiss. (Dkt. #10). Petitioner filed a response to the government's motion to dismiss, Dkt. #13, and a motion to compel, Dkt. #12. Respondent filed a reply and opposition to petitioner's motion to compel. (Dkt. #11).

On February 26, 2007, the Ninth Circuit, after oral hearing, denied petitioner's petition for review on the merits. *Perez-Quiroz v. Gonzales*, No. 05-75123, 2007 WL 625172 (9th Cir. Feb. 26, 2007).

III. DISCUSSION

Petitioner argues that his continued detention, subject to a \$50,000 bond, violates his substantive and due process rights, and that his release is mandated pursuant to *Zadvydas*, 533 U.S. at 678. (Dkt. #4). Respondent argues that because petitioner's removal has been stayed by the Ninth Circuit pending its review of the BIA decision, the ninety-day removal period has not commenced, and petitioner's detention is based on INA § 236(a), 8 U.S.C. § 1226(a).

Respondent asserts that because petitioner's removal period has not commenced, this is not a post-order custody case where *Zadvydas* applies. (Dkt. #10 at 1, 6-8). On February 26, 2007, however, the Ninth Circuit denied petitioner's petition for review. Therefore, the removal period has commenced, and petitioner's detention is required under INA § 241(a)(2), 8 U.S.C. § 1231(a)(2).

"When a final order of removal has been entered against an alien, the Government must facilitate that alien's removal within a 90-day 'removal period.'" *Thai v. Ashcroft*, 366 F.3d 790, 793 (9th Cir. 2004)(citing *Xi v. INS*, 298 F.3d 832, 834-35 (9th Cir. 2002)); INA § 241(a)(1)(A), 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B)(emphasis added); *see also Khotessouvan v. Morones*, 386 F.3d 1298, 1300 n.3 (9th Cir. 2004) (stating that the 90-day removal period commences on "the date the order of removal becomes final; the date a reviewing court lifts its stay following review and approval of the order of removal; or the date the alien ordered removed is released from non-immigration related confinement."). During the removal period, continued detention is statutorily required. INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) ("During the removal period, the Attorney General shall detain the alien."). Where removal cannot be accomplished within the ninety-day removal period, detention beyond the removal period is authorized by INA § 241(a)(6), 8 U.S.C. § 1231(a)(6). In *Zadvydas* the Supreme Court determined that, beyond those ninety days, the

01 government is entitled to a presumptively reasonable period of detention of six months to bring
02 about the alien's removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 701, 121 S.
03 Ct. 2491, 150 L. Ed. 2d 653 (2001). After the six month period, the alien is eligible for
04 conditional release upon demonstrating that there is "no significant likelihood of removal in the
05 reasonably foreseeable future." *Id.*

06 In the present case, the Ninth Circuit dismissed petitioner's petition for review on February
07 26, 2007, thereby commencing the removal period.¹ *See* INA § 241(a)(1)(B)(ii), 8 U.S.C. §
08 1231(a)(1)(B)(ii). Accordingly, petitioner's ninety-day removal period will expire on or about
09 May 26, 2007, and the six month presumptively reasonable period will expire on or about August
10 26, 2007. Accordingly, petitioner's detention is statutorily required, and the Court must deny
11 habeas relief.²

12 IV. CONCLUSION

13 For the foregoing reasons, I recommend that respondent's motion to dismiss be granted,

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17 ¹ The stay of removal and the stay of voluntary departure expired upon issuance of the
mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

18 ² Petitioner has also filed a motion to compel, Dkt. #12, seeking to compel production of
19 twenty-one pages which were redacted from petitioner's Administrative Record filed with the
Court on December 11, 2006, Dkt. #9. Respondent has opposed petitioner's motion to compel,
20 arguing that the pages were redacted pursuant to 5 U.S.C. §§ 552(b)(5) and 552(b)(7)(c), and
thus, are not subject to discovery. (Dkt. #11 at 4). The Court concludes that the information
21 sought would not help to resolve this case. As reflected in the Report and Recommendation, it
does not appear that the apparent unavailability of the documents sought has in any respect
22 hindered plaintiff in litigating this matter.

In sum, the Court finds no basis for granting petitioner's motion to compel. Accordingly,
his motion to compel (Dkt. #12) should be DENIED.

01 and that this action be dismissed. A proposed Order accompanies this Report and
02 Recommendation.

03 DATED this 23rd day of March, 2007.

04 

05 Mary Alice Theiler
06 United States Magistrate Judge